BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WESTERN COLORPRINT)

For Appellant: Jeffrey R. Reimer
General Manager

For Respondent: Bruce W. Walker
Chief Counsel

Kendall E. Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Western Colorprint for refund of a penalty and interest in the total amount of $501.83 for the income year ended June 30, 1976.

Appellant Western Colorprint is a California corporation which commenced doing business in this state on July 1, 1973. Appellant uses the cash receipts and disbursements method of accounting and files its franchise tax returns on the basis of a fiscal year ending on June 30th.

On or before September 15, 1976, appellant filed a timely return for the income year ended June 30, 1976. The return reflected a total tax liability of $8,820.00 but no prepayments of estimated tax. Because of the lack of prepayments, respondent assessed a penalty of $487.41 for underpayment of estimated tax. Appellant paid the penalty, plus interest, and filed a timely claim for refund alleging that respondent is estopped from imposing the penalty. Whether that contention is correct is the question we must decide.

The basis for the asserted estoppel is that several of respondent's employees allegedly misled appellant into believing. that its federal subchapter S status would be recognized for California franchise tax purposes. Appellant apparently applied for federal subchapter S status on June 20, 1975, and it says that at the same time it was told by an employee in respondent's Santa Ana office that it could deduct dividends paid during the current year. Appellant also states that at a later date it received the same advice from another employee in the same office. According to appellant, it relied on this advice in concluding that it would not have any franchise tax liability and that it did not need to make any estimated tax prepayments.

As a general rule, estoppel may be applied against the government when justice and right require it (City of Long Beach v. Mansell, 3 Cal. 3d 462, 496-497 (1970); Strong v. County of Santa Cruz, 15 Cal. 3d 720, 725 (1975)), but four conditions must be satisfied before the estoppel doctrine can be applicable: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. (Strong v. County of Santa Cruz, supra, 15 Cal. 3d at 725.) Since the party asserting an estoppel bears the burden of proof (Appeal of Patricia M. Blitzer, Cal. St. Bd. of Equal., April 5, 1976), appellant must establish each of the four elements enumerated above.

The record does not reveal the precise details of appellant's conversations with respondent's employees. Specifically, we do not know exactly what questions appellant asked the employees, or what answers were given. Under these circumstances, we must conclude that appellant has failed to prove either that respondent was fully apprised of all the facts or that appellant was actually given incorrect or misleading advice. For this reason alone, an estoppel is not warranted in this case. We note, however, that even if all of appellant's allegations were accepted at face value, the estoppel doctrine would still not be applicable, since a taxing agency is not bound by the informal opinions expressed by its employees on questions of taxability. (Appeal of Richard W. and Ellen Campbell, Cal. St. Rd. of Equal., Aug. 19, 1975.)

For the reasons set forth above, respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Western Colorprint for refund of a penalty and interest in the total amount of $501.83 for the income year ended June 30, 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of August , 1978, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member